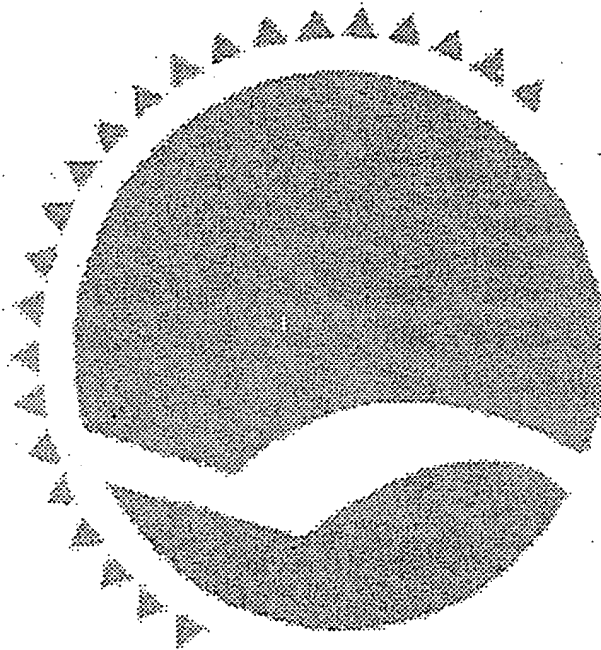

ORAL DEPOSITION OF QINGHUA LIU

February 7, 2003



CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

Sunbelt Reporting & Litigation Services
(713) 667-0763 Houston
(214) 747-0763 Dallas

Page 1

CAUSE NO. 2001-61352

1 BAYLOR COLLEGE OF MEDICINE) IN THE DISTRICT COURT OF
 2 and BCM TECHNOLOGIES, INC..)
 3)
 4)
 5 Plaintiffs/Counter-defendants.)
 6)
 7 VS.)
 8)
 9 CLONTECH LABORATORIES, INC..) HARRIS COUNTY, T E X A S
 10)
 11 Defendant/Counter-plaintiff.)
 12)
 13 VS.)
 14)
 15 INVITROGEN CORPORATION.)
 16)
 17 Additional Counterclaim)
 18 Defendant.) 133RD JUDICIAL DISTRICT
 19 *****
 20 ORAL DEPOSITION OF
 21 QINGHUA LIU
 22 February 7, 2003
 23 *****
 24 Reported By: Taye J. Clark
 25 Job No. 39664

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13	
14 NUMBER DESCRIPTION PAGE MARKED	
15 1 BCMT Technologies, Inc.. memorandum dated 10	
March 18, 1999 to James S. Friou from	
16 Christine B. Powaser	
17 2 Affidavit of Qinghua Liu, Ph.D. 13	
18 3 United States Patent No. 005851808A 18	
19 4 Handwritten notes 53	
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21 6 Copy of an e-mail from "Qun Shan" to 60	
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22	
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ORAL DEPOSITION OF

1 QINGHUA LIU, produced as a witness at the instance of
 2 the DEFENDANT/COUNTER-PLAINTIFF, and duly sworn, was
 3 taken in the above-styled and numbered cause on the 7th
 4 day of February, from 9:14 a.m. to 10:58 a.m., before
 5 Taye J. Clark, CSR in and for the State of Texas,
 6 reported at the offices of Patton Boggs, LLP, 2001 Ross
 7 Avenue, Suite 3000, Dallas, Texas 75201, pursuant to
 8 the Texas Rules of Civil Procedure and the provisions
 9 stated on the record or attached hereto.
 10
 11

A P P E A R A N C E S

FOR THE PLAINTIFFS/COUNTER-DEFENDANTS:

14 MS. M. MICHELLE MULLER, PH.D.
 15 Vinson & Elkins
 The Terrace 7
 16 2801 Via Fortuna, Suite 100
 Austin, Texas 78746-7568

FOR THE DEFENDANT/COUNTER-PLAINTIFF:

18 MR. MARC R. LABGOLD, PH.D.
 19 Patton Boggs, LLP
 20 8484 Westpark Drive
 McLean, Virginia 22102

Page 4

PRELIMINARY PROCEEDINGS

1 THE REPORTER: Going on the record at
 2 9:14 a.m.

4 QINGHUA LIU,
 5 having been first duly sworn, testified as follows:

6 THE REPORTER: By the Rules?

7 MR. LABGOLD: Yes.

8 THE REPORTER: Do you want to read and
 9 sign?

10 MS. MULLER: Yes.

11 MR. LABGOLD: In front of any Notary is
 12 fine.

EXAMINATION

14 QUESTIONS BY MR. MARC R. LABGOLD:

15 Q Good morning, Dr. Liu.

16 A Good morning to you, too.

17 Q Have you ever been deposed before?

18 A No.

19 Q Okay. Just so you understand, I'm going to ask
 20 you some questions, I'm going to show you some
 21 documents. Hopefully my questions will be clear enough
 22 that you'll understand.

23 If you don't understand the question, just
 24 ask and I'll try to clarify.

25 Your counsel may have certain objections.

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1 She'll say, "Objection." The first time she does, I
2 guarantee you you'll sit there and turn around and look
3 at her and wait for something else. That's all it is,
4 she's noting an objection for the record.

5 Unless she instructs you not to answer,
6 I'll expect an answer to the best of your ability.

7 By whom are you currently employed?

8 A U.T. Southwestern in Dallas.

9 Q Okay. And what's your position there?

10 A Post doctoral fellow.

11 Q In whose lab?

12 A Dr. Xiaodong Wang.

13 Q And what type of work are you doing?

14 A Biochemistry.

15 Q On what type of project?

16 A RNA Interference.

17 Q And how long have you been in your current
18 position?

19 A Two years.

20 Q And prior to that, am I correctly understanding
21 you were at Baylor?

22 A Yes.

23 Q And for the entire time you were at Baylor,
24 were you in Dr. Elledge's lab?

25 A Yes.

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1 Q Now, did you prepare -- did you do anything to
2 prepare for your deposition here today?

3 A You mean the deposition document?

4 Q Did you -- did you meet with your attorneys?

5 A Yes.

6 Q And who did you meet with?

7 A I meet with Michelle and Tracy.

8 Q Okay. And for how long did you meet?

9 A About two --

10 MS. MULLER: I'm going to object on the
11 basis of privilege.

12 MR. LABGOLD: That's not a privilege.

13 You want me to show you transcripts from
14 yesterday where I went through the same thing?

15 It's not privileged that you met, it's not
16 privileged where you met, it's not privileged how long
17 you met. I'm allowed to ask him as I did for the last
18 few depositions what documents he reviewed. I'm allowed
19 to ask if anything refreshes his recollection.

20 I can ask him what he discussed during
21 those meetings and you can object and instruct him not
22 to answer, but other than that, I'm entitled to an
23 answer.

24 Q (By Mr. Labgold) How long did you meet?

25 MS. MULLER: Well, I'm going to have to

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1 review that, and if I'm incorrect on that, I will look
2 at it, but for the moment I'm going to object on the
3 basis of privilege.

4 MR. LABGOLD: Well, it's not worth my
5 time, but I will tell you this -- no.

6 Q (By Mr. Labgold) Did you review any documents
7 during your preparation?

8 A No.

9 Q Other than your meeting with your counsel at
10 some unidentified undisclosed location -- the vice
11 president may have been there with you but I won't ask
12 that because that may also be privileged -- did you do
13 anything else to prepare to be able to testify here
14 today?

15 A No.

16 Q Have you spoken to Dr. Elledge anytime in the
17 past year about the subject of the Univector System or
18 this laboratory -- or this litigation?

19 A Yes.

20 Q And what were -- what did you discuss with Dr.
21 Elledge?

22 A I call him, ask him if he knows I have to talk
23 to you, and he said he knew about it, it's fine.

24 Q Did he tell you that he had had a deposition?

25 A Yes.

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1 Q Did he tell you what questions were asked
2 during that deposition?

3 A No.

4 Q Did you discuss anything else concerning the
5 deposition or just asking him if it was okay to do a
6 deposition?

7 A He said, "Answer the question to your best
8 knowledge, do not make any guess."

9 Q Anything else?

10 A No.

11 Q Now, if I understand correctly, you were one of
12 the people who contributed to the development of the
13 Univector System, correct?

14 A Yes.

15 Q And you have prepared a paper which was
16 published, disclosed in that system, correct?

17 A Yes.

18 Q And you also filed a patent application?

19 A Yes.

20 Q And is it my understanding -- is my
21 understanding correct that it is you and Dr. Elledge
22 that created the Univector System?

23 A Yes.

24 Q Now, I understand that Ms. Li was involved in
25 a -- I don't know how best to describe it -- a variation

Page 9

1 of the Univector System where it was directed to
2 homologous recombination. Is that your understanding?
3 A It's all part of UPS system.
4 Q Okay. And is that part of what was in your
5 patent?
6 A I don't know.
7 Q Okay. Now, you collect royalties based on your
8 contribution, correct?
9 A Yes.
10 Q And do you – what frequency do you receive
11 checks on that?
12 A I don't remember.
13 Q Do you recall how much you've received in
14 total, approximately?
15 A I can only estimate, but I'm not going to.
16 Q Was it \$100,000?
17 A Less than that.
18 Q Was it \$50,000?
19 A It's a couple of thousand dollars, I would say.
20 Q Just like \$2,000?
21 MS. MULLER: Objection; form.
22 A I will say a couple of thousand dollars.
23 Q (By Mr. Labgold) Okay. Well, I'm trying to get
24 an idea of what you mean by "a couple."
25 Colloquially in English, "a couple" would

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1 be two?
2 A Oh, really?
3 Q Some people would say "a few" is three, but we
4 might differ on that.
5 A Approximately \$5,000.
6 Q And that's the total which you have received to
7 the best of your understanding?
8 A Per year.
9 Q Per year. Okay.
10 Were you involved in the decision of how
11 the royalties would be distributed amongst you and your
12 coinventors?
13 A No.
14 Q Let me mark as Lui Exhibit 1 a copy of a BCMT
15 document bearing production number BCM 001659 through
16 1664.
17 (Exhibit No. 1 marked.)
18 Q (By Mr. Labgold) If you take a look down at the
19 document about halfway through the page, there's a
20 heading there that says "Inventors."
21 A Uh-huh.
22 Q And then it gives a breakdown between you –
23 Ms. Li and yourself.
24 A Uh-huh.
25 Q And does this comport with your recollection

Page 11

1 that for 1999 you received approximately \$5,000?
2 A You mean under the inventors, this part?
3 Q Yeah.
4 A Are you saying if the number looks correct?
5 Q Yeah, your general recollection?
6 A Yes.
7 Q Now, do you know why Ms. Li is not named as an
8 inventor on the patent?
9 A I don't know.
10 MS. MULLER: Objection; form.
11 Q (By Mr. Labgold) Was it your understanding that
12 your contribution to the development of the Univector
13 System and Ms. Li's were equivalent?
14 MS. MULLER: Objection; form.
15 A Can you rephrase the question?
16 Q (By Mr. Labgold) Do you believe that Ms. Li
17 contributed the same amount as you did to the
18 development of the Univector System?
19 MS. MULLER: Objection; form.
20 A No.
21 Q (By Mr. Labgold) Do you know why, then, Ms. Li
22 obtains the same royalties as you do?
23 A I don't know.
24 Q Have you ever discussed that with Dr. Elledge?
25 A No.

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1 Q Have you ever discussed that with anybody else
2 at Baylor or BCMT?
3 A Yes.
4 THE WITNESS: Is that a privilege?
5 MS. MULLER: To the extent that you spoke
6 with counsel or involved communication of counsel, then
7 I instruct you not to answer.
8 A That involves discussion with patent counsel at
9 Baylor.
10 Q (By Mr. Labgold) Well, at any time did you
11 raise a concern with anyone at BCMT as to whether the
12 distribution of royalties was equitable?
13 MS. MULLER: Again, to the extent that
14 that requires you to discuss – to disclose any
15 conversation with counsel, I instruct you not to answer.
16 MR. LABGOLD: And Counsel, I would – I
17 don't have the energy or the time to deal with this. I
18 will just note on the record – and I can tell we're
19 coming back for another deposition, and it's going to be
20 on your client's dime.
21 Because if he's going to Baylor and he's
22 complaining or inquiring as to why his amount is
23 equivalent to somebody who joined the project after the
24 patent was filed, that's not seeking legal counsel.
25 That's a business dispute.

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1 Now, you can instruct him as you will.
2 I'll give you a moment to think about it. If you're
3 going to tell me the instruction stands, I'll move on,
4 and we'll deal with that later.

5 MS. MULLER: For the moment the
6 instruction stands.

7 MR. LABGOLD: Okay.

8 Q (By Mr. Labgold) Did you ever get an answer as
9 to why Ms. Li gets the same amount of royalties as you
10 do despite —

11 A No.

12 Q — the fact that —

13 Fair enough.

14 I'd like to mark as Liu Exhibit 2 a copy
15 of an affidavit which you signed.

16 (Exhibit No. 2 marked.)

17 Q (By Mr. Labgold) Can you tell me if you've seen
18 this document before today?

19 A Yes.

20 Q Did you yourself prepare the text of the
21 document?

22 A Yes.

23 Q Did you type it yourself?

24 A No.

25 Q So if I understand correctly, you wrote the

Page 14

1 text of the document and then forwarded it to somebody
2 else for typing?

3 MS. MULLER: Objection; privileged.

4 To the extent that that requires you to
5 reveal any conversation you had with counsel, again —

6 MR. LABGOLD: There is nothing privileged
7 about that. I am entitled to know how he prepared his
8 declaration, affidavit, whatever you want to call it,
9 his sworn statement.

10 Q (By Mr. Labgold) Are you going to —

11 MS. MULLER: If it involved a conversation
12 with counsel, I'm going to instruct him not to answer.

13 MR. LABGOLD: Have you done this before?

14 MS. MULLER: Sir?

15 MR. LABGOLD: Have you done this before?

16 MS. MULLER: I'm not being deposed here.

17 Q (By Mr. Labgold) When you signed this
18 affidavit, did you understand that you were under oath?

19 A Yes.

20 Q Did you understand what the consequences were
21 if you made a statement which were not true, to your
22 knowledge, in a sworn statement?

23 A Yes.

24 Q And do you understand that you are under oath
25 here today, and that if you do not tell the truth, that

Page 15

1 the penalty of perjury adheres to that?

2 A Yes.

3 Q Okay. If you take a look at Paragraph 2 under
4 Roman numeral two, says: (Reading) I contributed to the
5 development of the univector plasmid-fusion system.

6 What was your contribution?

7 A My contributions to develop the Cre enzyme and
8 show this concept, this system works in principle.

9 Q When you say "develop the Cre enzyme," what are
10 you talking about?

11 A Making the GST-Cre.

12 Q So making a GST-Cre fusion, correct?

13 A No.

14 Q Please explain.

15 A Not only that, more than that.

16 Q Okay. Please explain.

17 A Making the —

18 MS. MULLER: Objection; form. I'm sorry.
19 Go ahead.

20 A Making a fusion protein, express it, an E.
21 coli, purify it, demonstrate the purified protein has
22 high — high specific activity.

23 Q (By Mr. Labgold) Okay. Now, GST fusion
24 proteins were known in the art prior to your work,
25 correct?

Page 16

1 A Correct.

2 Q And the Cre enzyme itself was known in the art
3 prior to your work, correct?

4 A Correct.

5 Q And am I correct in understanding that the Cre
6 recombinases, the Cre enzyme, its ability to recombine
7 loxP site was also known in the art, correct?

8 A Correct.

9 Q If you take a look at page — I'm sorry, we got
10 a stapling error here.

11 Actually, looking at Page 2 of your
12 declaration, and you say that the Univector System was
13 described and explained in an article and then it sets
14 forth the article. Do you see that?

15 A Uh-huh, the first two sentences.

16 Q Yes. And I'd like to mark — let me give you a
17 document we've already marked as Elledge Exhibit 3, if
18 you can confirm for me that is the article to which you
19 were referring?

20 A Yes.

21 Q And when you prepared — let me ask this: Were
22 you involved in the preparation of the article?

23 A Yes.

24 Q And to the best of your ability, did you
25 completely and fully describe the Univector System in

Page 17

1 the article?
 2 A Yes.
 3 Q And if I understand correctly, the goal of
 4 preparing an article that goes into a peer reviewed and
 5 public journal is to disseminate your research
 6 information into the public, correct?
 7 A Yes.
 8 Q And the goal being that from your research
 9 article, like the research articles which you cite in
 10 your own paper, other people could take your information
 11 and use it within the scientific community?
 12 A Yes.
 13 Q So am I correct in understanding that the
 14 purpose of publishing your information is to publicly
 15 disseminate the research information contained in the
 16 article?
 17 A Yes.
 18 Q Now, in the paragraph of your declaration which
 19 we were referring to, it also refers to a patent which
 20 you've called the Univector System Patent. Do you see
 21 that?
 22 A Yes.
 23 Q And I'd like to mark as Liu Exhibit 3 a copy of
 24 U.S. Patent No. 5851808.
 25 MR. LABGOLD: And I'll apologize to

Page 18

1 Counsel, I only have one copy.
 2 MS. MULLER: That's okay.
 3 MR. LABGOLD: Off the record.
 4 (Exhibit No. 3 marked)
 5 (Discussion off the record.)
 6 Q (By Mr. Labgold) Can you confirm for me that
 7 that is the patent to which you were referring, on Page
 8 2 of Liu Exhibit 2?
 9 A Yes.
 10 Q And this is the patent to which you previously
 11 referred to which you and Dr. Elledge were inventors,
 12 correct?
 13 A Correct.
 14 Q And I don't know if this will refresh your
 15 recollection, if you note that there's a filing date
 16 here indicating that the patent application was filed on
 17 February 28th, 1997, do you recall that Ms. Li joined
 18 the lab in approximately March of 1997?
 19 A I don't recall.
 20 Q Okay. Now, was this the first patent
 21 application you had ever filed?
 22 A Yes.
 23 Q And when you were preparing your patent
 24 application, were you advised that you had an obligation
 25 to disclose all relevant prior art information --

Page 19

1 MS. MULLER: Objection --
 2 Q (By Mr. Labgold) -- to the United States Patent
 3 and Trademark Office.
 4 MS. MULLER: -- to the extent that that
 5 requires you to reveal communications between yourself
 6 and counsel, I instruct you not to answer that.
 7 Q (By Mr. Labgold) Did you have an understanding
 8 that you had an obligation, an uncompromising duty of
 9 candor?
 10 MS. MULLER: Again, to the extent that
 11 that -- that you would have to reveal conversations
 12 between yourself and counsel, I instruct you not to
 13 answer that.
 14 Q (By Mr. Labgold) Did you have an understanding
 15 that you had to disclose what is known as the best mode
 16 of practicing your invention at the time your
 17 application is filed?
 18 MS. MULLER: Same objection.
 19 Q (By Mr. Labgold) Are you going to follow your
 20 counsel's instruction on -- every time she tells you not
 21 to answer?
 22 A Yes.
 23 Q Okay. That just saves me a little trouble and
 24 saves the court a little trouble later when I have to go
 25 through the record.

Page 20

1 Did you comply with your duty of candor
 2 obligations as imposed by 37 CFR 1.56A?
 3 MS. MULLER: Objection; form.
 4 A What's C --
 5 Q (By Mr. Labgold) Has anybody ever told you
 6 about the duty of candor which is owed to the Patent
 7 Office?
 8 MS. MULLER: To the extent that that would
 9 require you to reveal conversations with counsel, I
 10 instruct you not to answer.
 11 Q (By Mr. Labgold) Have you ever been told that
 12 it's necessary during the prosecuting of your patent
 13 application to reveal all relevant material information
 14 to the United States Patent and Trademark Office?
 15 MS. MULLER: Same instruction.
 16 Q (By Mr. Labgold) And again, you're not going to
 17 answer the question, correct?
 18 A Yes.
 19 Q Did you identify to the United States Patent
 20 and Trademark Office all relevant and material
 21 information that you are aware of at the time of the
 22 filing of your patent application?
 23 MS. MULLER: Same instruction.
 24 MR. LABGOLD: Not to answer?
 25 MS. MULLER: To the extent that it would

NO. 2001-61352

BAYLOR COLLEGE OF MEDICINE
and BCM TECHNOLOGIES, INC.

VS.

CLONTECH LABORATORIES, INC.

VS.

INVITROGEN CORPORATION

* IN THE DISTRICT COURT OF
*

* HARRIS COUNTY, T E X A S
*

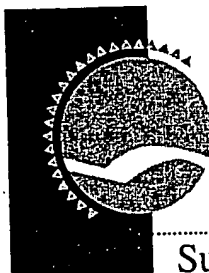
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* 133RD JUDICIAL DISTRICT

THE ORAL
DEPOSITION OF
MAMIE LI
FEBRUARY 6, 2003

REPORTED BY: DEBBIE K. FORRESTER
JOB NO. 39663



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* * * * *

EXHIBIT INDEX

NUMBER

DESCRIPTION

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E-mails

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Li 2

Fax to Ms. Ohata From

Ms. Powaser 3/10/99

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Li 3

Memorandum to Mr. Friou From

Ms. Powaser 3/18/99

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* * * * *

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ORAL DEPOSITION OF MAMIE LI

1 ORAL DEPOSITION OF MAMIE LI, produced as a witness
2 at the instance of the DEFENDANT/COUNTERCLAIM PLAINTIFF
3 and duly sworn, was taken in the above-styled and
4 numbered cause on the 6th of February, 2003, from
5 1:08 p.m. to 3:27 p.m.; before Debbie K. Forrester, CSR,
6 in and for the State of Texas, reported at the offices
7 of Vinson & Elkins, L.L.P., 1001 Fannin, 37th Floor,
8 Houston, Texas, pursuant to the Texas Rules of Civil
9 Procedure and the provisions stated in the record or
10 attached hereto.

A P P E A R A N C E S

11
12
13 FOR THE PLAINTIFF/COUNTERCLAIM DEFENDANT BAYLOR COLLEGE
14 OF MEDICINE and BCM TECHNOLOGIES, INC., and ADDITIONAL
COUNTERCLAIM DEFENDANT INVITROGEN CORPORATION:

15 Mr. David P. Blanke
16 Vinson & Elkins, L.L.P.
The Terrace 7
17 2801 Via Fortuna, Suite 100
Austin, Texas 78746

18 Mr. Patrick Turley
19 Associate General Counsel
Baylor College of Medicine
20 One Baylor Plaza
Houston, Texas 77030

21 FOR THE DEFENDANT/COUNTERCLAIM PLAINTIFF:

22 Mr. Marc Labgold
23 Patton Boggs, L.L.P.
2550 M Street, NW
24 Washington, DC 20037-1350

25 * * * * *

ORAL DEPOSITION OF MAMIE LI

1 we mutated it, the strain itself is --

2 Q (BY MR. LABGOLD) Right. What I'm saying is,
3 for example, do you know e. coli K12?

4 A Uh-huh.

5 Q And so if you started from e. coli K12 and you
6 disabled the recA gene, then we would put down "K12" and
7 then paren "recA minus" or "recA1"; correct?

8 A Correct.

9 Q And so the purpose of setting forth the
10 genotype in this fashion is to let the skilled
11 individual understand this is the mutation which has
12 occurred and it provides the proper function?

13 A Correct.

14 Q Now, if you look at Figure 1, what does this
15 show?

16 A It shows a scheme of Cre-lox reaction.

17 Q Now, is it your understanding that Dr. Elledge
18 invented the Cre-lox recombination, in general?

19 A Yes.

20 Q Let me back up. Aside from what is set forth
21 in the figure, the recognition that you could use, for
22 example, lox p sites with cre recombinase, that was
23 something that was known prior to Dr. Elledge's
24 development of this system; correct?

25 A Correct.

ORAL DEPOSITION OF MAMIE LI

1 Q And the concept of using the lox p sites with a
2 cre recombinase was known in the prior art; correct?

3 A Can you repeat the question?

4 MR. LABGOLD: Would you read it back?

5 THE REPORTER: "And the concept of using
6 the lox p sites with a cre recombinase was known in the
7 prior art; correct?"

8 A Yes.

9 Q (BY MR. LABGOLD) And would it be fair to say
10 that -- let me back up.

11 Plasmids were clearly known in the prior
12 art, prior to the development of the Univector system;
13 correct? Just the concept of a plasmid was known before
14 Dr. Elledge developed the --

15 A Correct.

16 Q And a kanamycin resistance gene was known in
17 the art prior to Dr. Elledge's invention; correct?

18 A Correct.

19 Q And the ampicillin resistance gene was known in
20 the art prior to Dr. Elledge's invention?

21 A Correct.

22 Q And the use of either the kanamycin or the
23 ampicillin or a host of other antibiotic resistance
24 genes applied to a plasmid was known in the art prior to
25 Dr. Elledge's development of the Univector system;

ORAL DEPOSITION OF MAMIE LI

1 correct?

2 MR. BLANKE: I'm sorry. I lost that for a
3 second. Can I get that read back, please?

4 THE REPORTER: "And the use of either the
5 kanamycin or the ampicillin or a host of other
6 antibiotic resistance genes applied to a plasmid was
7 known in the art prior to Dr. Elledge's development of
8 the Univector system; correct?"

9 A I'm a little confused. Using the kanamycin and
10 ampicillin together in a --

11 Q (BY MR. LABGOLD) What I'm saying is plasmids
12 containing antibiotic resistance genes were known in the
13 art prior to Dr. Elledge's development of the Univector
14 system; correct?

15 A Correct.

16 Q And, in fact, many of the antibiotic resistance
17 genes have been isolated from bacteria, from plasmids
18 which are transferred from bacteria to bacteria;
19 correct?

20 A Correct.

21 Q And, finally, the GST-Cre fusion protein was
22 known in the art prior to Dr. Elledge's development of
23 the Univector system; correct?

24 A That, I don't know.

25 Q Is it -- if you take a look at your paper, in

1 the second column and it says "For a routine analysis of
2 a new gene, it might be desirable to express it in
3 bacteria as a glutathione-S-transferase fusion protein
4 or with a six histidine (His6) tag for purification and
5 antibody production." Do you see that?

6 A Uh-huh.

7 Q Does that refresh your recollection that the
8 GST fusion proteins were known in the art prior to
9 Dr. Elledge's development of the Univector system?

10 A For GST fusion proteins, yes.

11 Q And so is it fair to say that the -- is it fair
12 to say that what Dr. Elledge achieved was to take these
13 elements and to use them in a way which would achieve
14 this facile recombination process?

15 A Can you repeat the question?

16 MR. LABGOLD: Let's have it read back.

17 THE REPORTER: "And so is it fair to say
18 that the -- is it fair to say that what Dr. Elledge
19 achieved was to take these elements and to use them in a
20 way which would achieve this facile recombination
21 process?"

22 A What's "facile" mean?

23 Q Rapid, easy.

24 So, basically, what I'm saying: Would it
25 be fair to say that he took these known elements and

ORAL DEPOSITION OF MAMIE LI

1 combined them in a way which achieved this result of the
2 Univector system?

3 A Not everybody can do that.

4 Q Oh, I'm not saying that they can.

5 A That is true. These elements are all known,
6 but I don't think not everybody can think of a way to
7 put -- to use Cre-lox to put two plasmids together
8 making fusions in a rapid way.

9 Q So if I understand correctly, the novelty, to
10 the extent that any exists, relates to the combination
11 and how they're combined as opposed to the individual
12 components?

13 A Yes. To me, it's the concept of putting these
14 things together.

15 Q Now, is this Figure 1 -- is this an accurate
16 representation -- I'm sorry. I'm in the document that
17 you sent out with the kit.

18 A Oh, okay.

19 Q This is on the page bearing the Production
20 No. 370. Does this picture fairly depict how the
21 recombination occurs?

22 A Yes.

23 Q And although in simple diagram form, does this
24 convey to people of skill the recombination which occurs
25 between the two plasmids?

ORAL DEPOSITION OF MAMIE LI

1 Q Now, I notice that there's two bacterial
2 strains here, both of which are Barry Wanner strains?

3 A That's right.

4 Q And do you have a recollection that one of the
5 features of some of these strains is that they have a
6 conditional origin of replication?

7 A That's right.

8 Q And the conditional origin of replication was
9 not developed by Dr. Elledge; correct?

10 A No.

11 Q This list does not include one of the strains
12 which is shown here in the bacterial strain table on the
13 page ending in 369, BUN10. Do you see that?

14 A Yes, I see that.

15 Q Do you know what that strain is useful for?

16 A That strain is mainly used for homologous
17 recombination.

18 Q So if you're not using homologous
19 recombination, you wouldn't use the BUN strains;
20 correct?

21 A You can use that to replicate pUNI.

22 Q But not for carrying out the homologous
23 recombination?

24 A You can use it for both. You can replicate
25 pUNI in that strain also.

ORAL DEPOSITION OF MAMIE LI

1 A Correct.

2 Q And prior to the development of the Univector
3 system, were there strains that were known to be useful
4 with plasmids having conditional origins of replication?

5 A I don't know that. I don't know much about --
6 I don't know that much detail about bacteria before
7 then.

8 Q But you did testify the conditional origenes of
9 replication were known; correct?

10 A That's correct.

11 Q So, again, if you don't know, that's fine, but
12 doesn't that lead you to the conclusion that if the
13 conditional ori plasmids were in existence there must
14 have been strains that could propagate them?

15 A That's right.

16 Q Now, if I understand the process correctly,
17 then, you got an e-mail from Dr. Elledge. He told you
18 what to send. You would then prepare the package and
19 send that out to Dr. Archdeacon, or whoever the
20 individual is, along with the paper materials?

21 A That's right?

22 MR. BLANKE: Could I get that read back?

23 THE REPORTER: "Now, if I understand the
24 process correctly, then, you got an e-mail from
25 Dr. Elledge. He told you what to send. You would then

CAUSE NO. 2001-61352

BAYLOR COLLEGE OF MEDICINE) IN THE DISTRICT COURT

and BCM TECHNOLOGIES, INC.)

Plaintiffs,)

VS.) HARRIS COUNTY, TEXAS

CLONTECH LABORATORIES,)

INC.,)

Defendants.) 133RD JUDICIAL DISTRICT

ORAL DEPOSITION OF

STEPHEN J. ELLEDGE

JULY 17, 2002

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THE ORAL DEPOSITION OF STEPHEN J.

ELLEDGE, produced as a witness at the instance of
the Defendants, and duly sworn, was taken in the
above-styled and numbered cause on the 17th day of
July, 2002, from 10:00 a.m. to 2:50 p.m., before
R. Patrick Tate, CSR in and for the State of Texas,
reported by machine shorthand, at the offices of
Baylor Colledge of Medicine, 1200 Cullen, Houston,
Harris County, Texas pursuant to the Texas Rules of
Civil Procedure.

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EXAMINATION INDEX

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1 E. coli.

2 Q. Now, if we keep that picture open and you
3 turn to your article, which is the document we've
4 marked as Exhibit 3, I'd like to go to figure 1 of
5 that document which is on page 1302 of the article,
6 146 production number, is what you've just
7 described the same as what's described at the top
8 of -- top right-hand -- top left-hand corner of
9 figure 1 of the paper?

10 A. It's similar in essence, yes. I mean,
11 the -- sort of the general idea is conveyed. This
12 is similar in both of those. There's a little more
13 detail on the paper.

14 Q. But the same concept, if you will, of how
15 it works?

16 A. Yes.

17 Q. Okay. Now, with regard to the lox sites,
18 did you discover the lox sites or were they
19 described in prior references?

20 A. The loxP site had been previously
21 published, and I created the loxH site and a few
22 other variants that don't have names.

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1 Q. And the cre mediation for the loxP
2 recombination, had that been previously described
3 in the prior art?

4 A. Yes.

5 Q. Now, I believe if I understand correctly,
6 your, the rapidity of the screening method relies
7 in part upon the conditional origin of replication,
8 correct?

9 A. When you say the screening method, what
10 exactly do you mean?

11 Q. Well, explain how the conditional origin
12 of replication, what its function is?

13 A. Oh, its function is to prevent the
14 Univector or recombination, certain recombination
15 products that include the Univector, it precludes
16 them from replicating by themselves in the host E.
17 coli strain that you transformed them into.

18 Q. So that for the nontechnically inclined,
19 after you've done the recombination, in order to be
20 able to isolate the species out of all the possibly
21 species which are generatable, the conditional
22 origin of replication will help remove the

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1 background of the pUNI vector, itself, correct?

2 A. Yes, actually in many respects it's very
3 similar to the Clontech --

4 Q. Does the Clontech --

5 A. -- Creator system. They have a
6 conditional origin also.

7 Q. We'll get to that in a moment. And the
8 kanamycin resistance, the function of that is also
9 a screening; is that correct?

10 A. Yes. You need a drug in this embodiment
11 to make sure that your -- the linked sequence,
12 which is the gene, is transferred.

13 Q. And the two that you have embodied in
14 your examples are kanamycin and ampicillin
15 resistance, correct?

16 A. Yes.

17 Q. And those were genes that you did not
18 discover, correct?

19 A. That's correct.

20 Q. Had you discovered the conditional origin
21 of replication?

22 A. No, it was previously published.

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